



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

September 11, 2013



Ms. Ellen Weitzler, P.E.  
USEPA-New England Region 1  
5 Post Office Square, Suite 100  
Mail code OEPO6-2  
Boston, MA 02109-3912

Via email: [weitzler.ellen@EPA.gov](mailto:weitzler.ellen@EPA.gov)

Dear Ms. Weitzler:

Please accept this letter in response to EPA's solicitation of public comment on whether Maine's water quality standard revisions, submitted to EPA on January 9, 2013, apply within Indian Territories.

EPA's notice states that it is seeking additional comments on these proposed revisions because some members of the public may have been unaware that the State intended to apply these standards to Indian Territory. The notice states that because DEP's own notice of rulemaking did not "explicitly indicate" that DEP intended to apply these standards to Indian Territory, the public may have been confused. We are puzzled by this for several reasons. First, as EPA is aware, notices of environmental rulemaking in Maine do not expressly state that the proposed regulation would apply to Indian Territory because Maine's regulatory jurisdiction applies uniformly throughout the State, including to Indian lands and waters. 30 M.R.S.A. § 6204. Never before has EPA said that a state rulemaking notice in Maine is deficient, problematic or confusing because it did not "expressly indicate" that the rule would apply to Indian Territory. Moreover, the public comments show that there was no such confusion. The Penobscot Nation and Houlton Band of Maliseet Indians submitted extensive comments addressing whether the standards would adequately protect sustenance fishers. We have no reason to believe any member of the public was confused about whether these revisions would apply to Tribal Territory, and every reason to believe that Maine's Tribes were well informed about this. Therefore, we do not believe there is any justification for EPA to hold a second, duplicative, federal notice and comment process on these revisions.

Additionally, to the extent EPA believes that these revisions are substantively inadequate or otherwise flawed, the agency was required by law to so inform DEP of that within 90 days of their submission. 33 U.S.C. § 1313(c)(3).

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
RAY BLDG., HOSPITAL ST.

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
(207) 764-0477 FAX: (207) 760-3143

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EPA has no authority to defer that determination until the completion of a separate notice and comment process, and even if the agency were to conclude now that there are problems with the revisions, it has no authority to require changes to them.

DEP professional staff worked hard to develop these standards using methodologies EPA has endorsed, and based on site-specific, local empirical data, as EPA prefers. In doing so, we took seriously all the comments we received, including from the Tribes and EPA staff. We are convinced that these standards are fully protective of human health, including for sensitive subpopulations that engage in sustenance fishing. Accordingly, we ask that EPA promptly confirm that these standards are approved and effective throughout the State, including to Indian Territory.

Sincerely,

  
Patricia W. Aho  
Commissioner

Cc: Mick Kuhns, Director BLWQ - DEP  
Brian Kavanah, Director DWQM - DEP  
Jerry Reid, AAG - OAG